

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

DONALD RHEIN,  
Plaintiff,

vs.

SMYTH AUTOMOTIVE, INC.,  
d/b/a SMYTH PARTS PLUS, et al.,  
Defendants.

Case No. 1:10-cv-710  
Bertelsman, J.  
Litkovitz, M.J.

**ORDER**

This matter is before the Court on plaintiff's motion to preclude the defendants from using any exhibits at trial and request for an expedited hearing. (Doc. 93).

For good cause shown, and for the reasons that follow, plaintiff's motion for an expedited hearing on the motion is **GRANTED**.

This matter is set for trial to begin September 24, 2012. A final pretrial conference is scheduled for August 23, 2012. On June 6, 2012, District Judge Bertelsman issued a final pretrial conference order which directed the parties to, *inter alia*, strictly comply with the pretrial disclosure provisions set forth in Fed. R. Civ. P. 26(a)(3). (Doc. 74). Rule 26(a)(3)(A) requires a party to provide to opposing parties and promptly file the following information about evidence it may present at trial other than solely for impeachment:

(iii) an identification of each document or other exhibit, including summaries of other evidence— *separately identifying those items the party expects to offer and those it may offer if the need arises*.

Fed. R. Civ. P. 26(a)(3)(A)(iii) (emphasis added). Pursuant to Judge Bertelsman's final pretrial conference order, objections to any exhibits identified under Rule 26(a)(3)(A)(iii) are due August 7, 2012. (Doc. 74 at 1-2).

Plaintiff objects to the identification of exhibits by defendants, arguing that it amounts to a document dump. Plaintiff contends that defendants' demonstrative exhibits have never been identified or exchanged by the parties; that defendants failed to indicate for any of its exhibits which exhibits it expects to offer at trial, and which may be offered if the need arises; and that a large number of the exhibits omit Bates stamp numbers associated with the exhibits to enable plaintiff to determine any good faith objections to these exhibits.

It appears the parties have engaged in some extrajudicial attempts at resolving this latest dispute over documents. Given the pendency of the upcoming pretrial conference scheduled before Judge Bertelsman on August 23, 2012, and in an effort to resolve this matter expeditiously, the Court **ORDERS:**

1. Defendants shall file a response to plaintiff's motion no later than **Monday, August 13, 2012 at 5:00 p.m.**

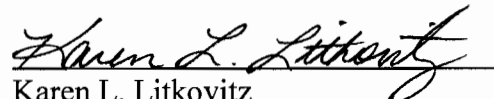
2. On **Tuesday, August 14, 2012 at 9:00 a.m.**, the parties shall convene in the undersigned's courtroom, Room 708, Potter Stewart United States Courthouse, 100 E. 5th Street, Cincinnati, Ohio 45202. The parties shall bring with them all exhibit books and exhibits they intend to use at trial and meet and confer over any disputed documents. The parties shall remain in the courtroom until they have, in good faith, exhausted all extrajudicial means of resolving this dispute. The parties shall arrive at a joint, concise list of exhibits/documents remaining in dispute and be prepared to present their arguments to the Court.

3. On **Tuesday, August 14, 2012 at 1:00 p.m.**, the undersigned shall hold a hearing in the courtroom, on the record, to resolve any remaining disputes.

In the event the parties are able to resolve their differences prior to the deadlines set forth above, they must contact the undersigned's chambers and so notify the Court. In that event, they will be excused from appearing in Court on August 14, 2012.

**IT IS SO ORDERED.**

Date: 8/7/12

  
Karen L. Litkovitz  
United States Magistrate Judge